

file

**BEFORE THE
STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Denial of a)	
Variance Request Submitted by)	Case No. IH-95-01
Kevin Cooper, City of West Bend,)	
Washington County, Wisconsin)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Southeast District, Department of Natural Resources denied the request of Kevin Cooper for a variance pursuant to NR 812.43, Wis. Adm. Code, from the requirement that the top of his well terminate a minimum of 12 inches above the established ground surface.

On January 18, 1995, the Department received a request for a hearing to review the denial. On January 25, 1995, the Department forwarded the file to the Division of Hearings and Appeals for hearing. Pursuant to due notice a hearing was conducted on February 21, 1995 in West Bend, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presided.

In accordance with §§ 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Kevin Cooper, applicant, by

Attorney Matthew S. Mayer
1725 E. Washington Street
West Bend, WI 53095-0518

Wisconsin Department of Natural Resources, by

Attorney Milton L. Donald
P. O. Box 7921
Madison, WI 53707-7921

FINDINGS OF FACT

1. Kevin Cooper owns property located at 5569 Peters Drive, Town of West Bend, Wisconsin. The property is located along the east shore of Silver Lake. Mr. Cooper is in the process of renovating the house and garage on this property.

2. The Cooper property is fifty feet wide by 260 feet deep. Peters Drive bisects the property. The Cooper house is located on the lake side of Peters Drive and the garage is located on the opposite side of Peters Drive.

3. During the renovation, Mr. Cooper had a new production well drilled for the property. The well is located along the north side of the garage. The top of the well terminates twelve inches above the ground.

4. Kevin Cooper is seeking a variance to terminate the well below ground level in a pit. The purpose of the variance is to make more space near the garage available for parking. Mr. Cooper is also concerned that the well, as now constructed, is susceptible to being struck by a motor vehicle. If the well is struck, the potential exists that the well casing could crack below ground level. If the casing cracked, foreign matter could seep into the well and contaminate the groundwater.

5. The well as now constructed complies with the requirements of Chapter NR 812, Wis Adm. Code. A variance from these requirements is necessary if the top of the well terminates less than twelve inches above the ground level. The intent of the requirement that the top of the well terminate a minimum of twelve inches above the established ground surface is to protect production wells from contamination resulting from rainwater leaking into a well or standing water seeping into the well.

6. The well as now constructed eliminates a space where a vehicle could park on the Cooper property. Housing in the area where the Cooper property is located is dense and parking space is scarce. No parking is allowed along Peters Drive.

7. The garage on the Cooper property has two and a half stalls and space exists for three vehicles to park in front of it and another vehicle could be parked along the side of the garage north of the well. Although an additional parking space on the Cooper property would be desirable, the Cooper property has adequate parking space and more than most of the neighboring properties. The concern about damage to the well resulting from the well being struck by a motor vehicle could be alleviated with bumper posts. Bumper posts installed around the well would prevent it from being struck by a vehicle.

8. The well as now constructed is in complete compliance with the requirements of Chapter NR 812, Wis. Adm. Code. Therefore strict compliance with the requirements at the Cooper property is feasible.

9. Wells of the design proposed by Kevin Cooper have been constructed in Wisconsin. However, they have been monitoring wells not production wells.

CONCLUSIONS OF LAW

1. Pursuant to § NR 812.29, Wis. Adm. Code, the pump installation of a well shall be completed such that the well casing pipe terminates at least twelve inches above the established ground surface.

2. Pursuant to § NR 812.43, Wis. Adm. Code, a variance from the requirements of Chapter NR 812, Wis. Adm. Code, may be granted if strict compliance with the requirements is not feasible. Strict compliance with the requirements of § NR 812.29, Wis. Adm. Code, is feasible for the well on the Cooper property.

3. The Division of Hearings and Appeals has authority pursuant to § 227.43(1)(b), Stats., to enter the following order.

ORDER

The denial of the Department of Natural Resources for a variance from the requirements of § NR 812.29, Wis. Adm. Code, for the well on the property owned by Kevin Cooper is affirmed.

Dated at Madison, Wisconsin on March 16, 1995.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
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By

 *Mark J. Kaiser*

MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.